IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 4831 of 2005

Between:

1 Nekkanti Adinarayana, s/o Narsimha Murthy,
r/o 5-4-16 & 5-4-17, Steemer Road, Narsapuram, W.G.District.
2 Smt.Nekkanti Sitharatnam, w/o Markandeyulu,
r/o 5-4-16 & 5-4-17, Steemer Road, Narsapuram, W.G.District.

..... PETITIONERS

AND

1 The Commissioner, A.P.State Excise Department, Opp:Gandhi Bhavan, Hyderabad.
2 The Dy.Commissioner, A.P.State Excise Department, Kakinada, East Godavari District.
3 The Superintendent, A.P.State Excise Department, Ashok Nagar, Eluru, West Godavari District.
4 The Circle Inspector, A.P.State Excise Department, Sivalayam Street, Narsapur, West Godavari District.
5 The Asst.Superintendent, Excise Department, Near Sub-Jail, Narsapur, West Godavari District.
6 K.V.N. Prabhakara Rao S/o. Bhaskar Rao
Narsapuram, West Godavari Dist. Ananta Bar and Restaurant, Licence No. 30/2001-02.
(R6 is impleaded as per court order dt. 30-3-2005 in WPMP 9204 of 2005)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to

issue a writ of mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents herein in not considering the representation dt.22-2-2005 and going ahead to renew licence period of Ajanta Bar, Narsapuram, W.G.District in the petitioner's premises bearing
D.No.5-4-16 & 17, Narsapuram, for the Excise year 2004-2005 in spite of the objections from the petitioners as illegal, unjust and arbitrary, and as such liable to be set aside.

Counsel for the Petitioners: MR.S.M.SUBHAN

Counsel for the Respondent Nos.1 to 5: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.6: Mr.A.Jagannadha Rao

The Court made the following :

ORDER:

Heard both the counsel appearing for the petitioners and the respondents.

The petitioners submit that they are the owners of the house property admeasuring 500 square yards in D.No.5-4-16 & 5-4-17 of Narsapuram of West Godavari District and the said premises were given on lease to the 6th respondent for establishment of bar for a period of three years commencing from April, 2000 to March, 2003. After the end of lease period, the first petitioner requested the 6th respondent to vacate and hand over the same. But, the 6th respondent requested him to wait for a further period of three months and even after lapse of three months, he failed to vacate the same. Therefore, the petitioners got issued a legal notice in December, 2004 to the 6th respondent and to the excise officials requesting them not to renew the licence.

This Writ Petition is filed to dispose of the said representation dated 22.02.2005 filed by the petitioners before the excise officials requesting them not to renew the licence of the 6th respondent for the excise year 2004-05 on the ground that no lease agreement was renewed in respect of the said premises.

The Writ Petition was filed without impleading the 6th respondent and on his application, the 6th respondent was impleaded.

The only prayer of the petitioners is to consider their representation, dated

22.02.2005 and to direct the respondents not to renew the licence in favour of the 6th respondent for the excise year 2004-05.

Admittedly, the lease period of the excise year 2004-05 is already over and the excise year 2004-05 came to an end by 31.03.2005. The representation of the petitioners is also not to renew the licence of the 6th respondent for the year 2004-05.

Therefore, I am of the opinion that the prayer in the Writ Petition has become infructuous.

However, it has been stated by the respondents that without impleading the 6th respondent who is an existing licensee in respect of the I.L. 24, the petitioners obtained an interim direction not to renew the licence of the 6th respondent. Therefore, the licence of the 6th respondent was not renewed, though the licences in respect of others have been renewed for a period of three months.

It is further stated that as per Rule 29(3)(b) of A.P. Indian Liquor and Foreign Liquor Rules, 1970 for the renewal of licence, there is no need or any requirement for production of the existing lease deed. Therefore, insisting upon the extension of lease period by the authorities is illegal and unsustainable.

The landlords cannot resort in evicting their tenants by preventing the excise authorities from renewing the licences and any grant of excise licence will be co-existence with the legal position of the petitioners. If the landlord obtains eviction order and merely because the excise licence was renewed, the licensee cannot continue in the said premises.

However, as the prayer in the Writ Petition is only to dispose of the representation, the Writ Petition is disposed of directing the respondents to consider and dispose of the representation, dated 22.02.2005 filed by the petitioners and the interim order granted earlier is vacated.

Accordingly, the Writ Petition is disposed of. No costs.

V. ESWARAIAH, J

Dated:11-04-2005

Ccm

To:

1 The Commissioner, A.P.State Excise Department, Opp:Gandhi Bhavan, Hyderabad.
2 The Dy.Commissioner, A.P.State Excise Department, Kakinada, East Godavari District.
3 The Superintendent, A.P.State Excise Department, Ashok Nagar, Eluru, West Godavari District.
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5 The Asst.Superintendent, Excise Department, Near Sub-Jail, Narsapur, West Godavari District.
6 Two CCs to the G.P. for Prohibition and Excise, High Court Buildings, A.P. Hyderabad (OUT)

7 Two CD copies.